IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

OP.No. 1475 of 1998(A)

PETITIONERS:
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1. **V.K. PRABHAKARAN, VELLIYAPARAMBIL HOUSE, EROOR.P.O.**

2. **V.K. SUMATHI, VELIYAPARAMBIL HOUSE, EROOR.P.O.**

BY ADV. SRI.S.SREEKUMAR, SRI.T.RAJESH.

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, CIVIL STATION, KAKKANAD, ERNAKULAM.**

2. **THE TAHASILDAR, KANAYANNUR TALUK, ERNAKULAM.**

3. **THE VILLAGE OFFICER, NADAMA VILLAGE, ERNAKULAM.**

BY GOVT. PLEADER SRI. MATHEW JOSEPH VADAKKEL FOR R1 TO R3.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 2679/1998 IN O.P. NO. 1475/1998

DISMISSED

18/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE DEMAND NOTICE UNDER SEC. 15 (3) OF THE BUILDING TAX ACT 1975.

EXT.P.2: COPY OF THE ORDER DTD. 31/07/92.

EXT.P.3: COPY OF THE MEMORANDUM OF REVISION PETITION DTD. 14/09/92 FILED BEFORE THE R.1.

EXT.P.4: COPY OF THE JUDGMENT IN O.P. NO. 907/93 DTD. 22/05/97.

EXT.P.5: COPY OF THE ORDER DTD. 23/10/97 ISSUED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NO.1475 of 1998-A

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Dated this the 18th day of August, 2007

JUDGMENT

The petitioners challenge the orders Exts.P2 and P5 which are passed by the Tahsildar and District Collector under the Building Tax Act. Petitioners are husband and wife. The building in question is situated in a property of an extent of 9 cents 168 sq. metres in survey No.1071/1 of Nadama Village, owned by the first petitioner. It is the admitted case in paragraph 2 of the original petition that the first petitioner constructed a single storied building in the property after obtaining the necessary plan and permit from the local authority. Thereafter, the first petitioner gave permission to the second petitioner to construct a building above the building constructed by the first petitioner. It is also averred that based on such permission granted by the first petitioner, the second petitioner was issued a building permit and accordingly the construction was completed. It is also admitted that the expenses for the construction were met jointly by the petitioners.

2. Initially these two floors were assessed separately by the authority and the petitioners remitted the tax demanded. Later, they were issued with

Ext.P1 notice by the assessing authority as empowered under Section 15 of the Kerala Building Tax Act. After overruling the objections, the building was assessed as a single unit and amount of Rs.19,763/- was assessed as tax as per Ext.P2 order. This was challenged in revision before the District Collector by Ext.P3. When the District Collector insisted for payment of the entire amount as a condition for entertaining the appeal, the petitioner approached this court by filing O.P.No.907/1993 and as per Ext.P4 judgment, the District Collector was directed to take a decision in the appeal. Finally, the appeal was rejected as per Ext.P5 which is under challenge in this original petition.

3. The contentions taken in the original petition are that Section 15 of the Act only enables rectification of arithematical error and that the re-assessment is not on proper grounds.

4. Learned Govt. Pleader, relying upon the decision of a Division Bench of this court in **P.P. Varghese v. Tahsildar and others (**ILR 2006 (2) Ker. 88), contended that in the absence of any evidence to show that the land on which the building was constructed, belong to different persons and in view of the admission that the land is owned by the first petitioner, the action taken by the assessing authority is clearly justified as Section 15 empowers the assessing authority to rectify such mistakes. In the above

decision, their Lordships held that "in a case where there is no evidence to show that the land on which building was constructed belongs to different persons, they have necessarily to show that cost of construction was met by different persons so as to treat a part of the building or flat of the building as one unit". Going by the admitted case, the first petitioner is the owner of the land. It is clear that the second petitioner was allowed to construct the building over the portion where the first petitioner has originally constructed one story. It is also admitted that expenses were jointly met by them. Hence, the principles stated in the above judgment will squarely apply here.

5. As regards the power of the assessing authority under Section 15 of the Act, learned counsel for the petitioners relying upon the decisions of this court in **Lakshmanan v. Tahsildar** (2002 (2) KLT SN case No.22, page 21) and **Lissy v. Tahsildar** (2000 (3) KLT 497) contends that the provisions of Section 15 will not allow a re-assessment by invoking the power conferring rectification of mistakes. Learned Govt. Pleader submits that herein it is only a rectification and not a re-assessment as such.

6. Any way, the said aspect has not been considered by the revisional authority while passing Ext.P5. Therefore, Ext.P5 is quashed. The District

Collector is directed to reconsider the matter afresh in the light of the contentions of the petitioners that Section 15 of the Act does not enable the assessing authority to order a re-assessment as, by passing order dated 31.7.1992, what is attempted herein was to assess the building by treating it as a single unit. The petitioners also will be heard before passing fresh orders. Final orders shall be passed within a period of three months from the date of receipt of a copy of this judgment. The interim order passed by this court on 22.1.1998 will continue till fresh orders are passed and communicated to the petitioner.

The original petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. No.1475 of 1998-A

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JUDGMENT

18th August, 2007.